

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
BLOCKCRUSHR, INC., :
:
Plaintiff, : 20-CV-3134 (FB) (RLM)
:
October 7, 2020
:
V. : Brooklyn, New York
:
CONSENSYS, FUND, IIP, :
et al., :
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR INITIAL CONFERENCE
BEFORE THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: KYLE ROCHE, ESQ.

For the Defendant: TIBOR NAGY, ESQ.

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1 THE COURT: Good afternoon, this is Judge
2 Mann on the line. I'm conducting a telephonic initial
3 conference in BlockCrushr, Incorporated v. ConsenSys,
4 Inc., et al., 20-CV-3134. I hope everyone is safe and
5 healthy.

6 Do I have plaintiff's counsel on the line?

7 MR. ROCHE: Yes, your Honor, this is Kyle
8 Roche from Roche Cyrulnik Freedman for plaintiff, and
9 I'm joined by my colleagues, Richard Cipolla and Warren
10 Li, also from Roche Cyrulnik Freedman.

11 THE COURT: I'm sorry, I didn't catch the
12 second name. I don't believe that individual is on the
13 docket, so could I have that name again?

14 MR. ROCHE: Yes, Warren Li.

15 THE COURT: No, I got your name. Richard,
16 and I didn't catch the last name.

17 MR. ROCHE: Cipolla, C-i-p-o-l-l-a.

18 THE COURT: All right. And who is on for
19 defendants?

20 MR. NAGY: Good afternoon, your Honor. This
21 is Tibor Nagy of Dontzin Nagy. I'm here for
22 defendants, and my colleague, Heidi Schumann, is on the
23 phone as well.

24 THE COURT: And I don't believe Ms. Schumann
25 is on the docket, either. Could I have the spelling of

1 your last name, Ms. Schuman?

2 MS. SCHUMANN: Yes, your Honor. It's S-c-h-
3 u-m-a-n-n.

4 THE COURT: All right, welcome to all of
5 you. As I state at the outset, this is on for a
6 telephonic initial conference. Before I turn to the
7 questionnaire that counsel have submitted, I would like
8 to get a better understanding about the underlying
9 facts of the case. I've read the complaint, which is
10 quite detailed and has given me a fairly good sense of
11 what the plaintiff's contentions are. But as is true
12 in most cases, the answer is not that illuminating, so
13 I will give defense counsel an opportunity to set forth
14 your theory of the case.

15 So will that be Mr. Nagy or Ms. Schumann
16 taking the lead on that?

17 MR. NAGY: Mr. Nagy, your Honor. Thank you
18 for the opportunity to address that. I think, your
19 Honor, we have several responses and theories of the
20 case.

21 Let me start first and foremost by saying we
22 certainly dispute any allegation that we
23 misappropriated any trade secrets. This technology at
24 issue here, this idea of using cryptocurrency for
25 recurring payments is fairly well known in the

1 marketplace. It was considered by a lot of companies,
2 not just this one, your Honor, and no one ultimately
3 had decided to do it because it's just a bad idea.

4 I would point out, your Honor, in this case,
5 as you say in the complaint, the entity that was
6 alleged to have misappropriated the trade secrets, this
7 entity called Daisy -- Daisy, your Honor, I don't
8 believe this is in dispute. Daisy never took off, has
9 been wound down, never had any customers or any
10 revenues much less any profits, so there's really no
11 money at stake in this case. Again, we dispute that
12 there was any misappropriation of trade secrets but
13 we're kind of baffled that this is being pursued at all
14 for that reason. And I would note, tellingly,
15 plaintiff didn't even sue Daisy. In most trade secret
16 cases, the target that's using the alleged trade
17 secrets is sued and you ask for an injunction stopping
18 it from doing what it's doing. That's not present here
19 because that just didn't happen here.

20 In addition, your Honor, as I alluded to,
21 this isn't a particularly secret idea, this central
22 idea of using cryptocurrency for recurring payments. A
23 lot of other companies considered it. If we go the
24 distance, at some point, we think there will be a motion
25 for summary judgment before you. It will point to the

1 lack of evidence of any misappropriation. It will also
2 point to the fact that there are no real trade secrets
3 at issue in this case.

4 One of the things, your Honor, that makes
5 this particular case unique is -- I spoke with counsel
6 before he even filed suit and as you saw, your Honor,
7 on your docket, we entered into an agreement whereby
8 defendants agreed that we would not pursue any Rule 12
9 motion. And in exchange, the key thing we wanted was
10 for counsel to tell us, what are these purported trade
11 secrets? Just disclose them to us. And we got that
12 agreement by way of an interrogatory. The plaintiff
13 here has told us what the trade secrets are.

14 We have some dispute as to whether the
15 response they sent us is adequate. We're meeting and
16 conferring about that now. We may need your assistance
17 with that. Hopefully, we don't. But the point here
18 is, we wanted to get that information early and we
19 certainly are confident about using it in a summary
20 judgment motion down the line, based on the various
21 theories I've mentioned, that these aren't really trade
22 secrets, that this company really didn't have any of
23 its trade secrets misappropriated by us, and that there
24 are no damages here at all, et cetera.

25 I think the last thing, your Honor, I'll say

1 is, on this damages point, we recently got pursuant to
2 your order initial disclosures from counsel for
3 plaintiff, and we looked at the claim of damages and we
4 really can't understand it. We're at a loss as to what
5 the damages here are. There's no concrete description
6 of what they are at all, and I would -- it seems to us
7 there really can't be, given the reality that Daisy
8 never took off, never had any revenues, et cetera. So
9 that, your Honor, in a nutshell is our view of this
10 case.

11 THE COURT: Hello?

12 MR. NAGY: Yes, Mr. Nagy speaking. I'm
13 still here.

14 THE COURT: All right, is there anything
15 else for the Court to tend to?

16 MR. NAGY: Your Honor, Mr. Nagy speaking
17 again. The only thing, your Honor, I would bring to
18 your attention is, I think we have -- counsel for
19 plaintiff and myself, we have worked out I think almost
20 every issue in your questionnaire by agreement. I
21 think to date, we have worked well together in reaching
22 agreement on issues, and I think a testament to that
23 fact is the fact that we were able to work out an
24 agreement along the lines that I discussed about
25 avoiding Rule 12 motions in exchange for an

1 interrogatory response.

2 I would just call to your attention that if
3 we're unable -- we have that response now and we think
4 it's inadequate in several ways. If we're unable to
5 resolve it, that is an issue that, on our side, we
6 would want to get some quick relief on, so we would
7 come to you seeking that relief. I hope we'll avoid
8 that. Counsel and I conferred and we've agreed that
9 they're going to supplement that response, but that is
10 a time sensitive issue for us because it's something we
11 specifically bargained for early in the case. Other
12 than that, I think every issue, as you can see in the
13 questionnaire we submitted, has been worked out by
14 agreement.

15 THE COURT: Well, before we turn to
16 scheduling, would counsel for plaintiff like to respond
17 to that presentation?

18 MR. ROCHE: Your Honor, I'll respond
19 briefly, just taking Mr. Nagy's points in reverse
20 order. I do think we've worked well together to date.
21 And with respect to his points on the interrogatory
22 response, the agreement, the pre-suit agreement that he
23 referenced specifically contemplated a supplement to
24 those interrogatory responses relating to the source
25 code. In fairness to Mr. Nagy, he has asked for things

1 outside of the source code specs for us to revisit and
2 has asked for some more detail to what is already a
3 very detailed description of the trade secrets that are
4 at issue in this litigation. We're going to do that
5 and we're going to be as detailed as possible and as we
6 think the law requires us to be. I hope that we can
7 work that out between us but if not, then we'll be back
8 in front of you on that.

9 As to the merits of the case, you know, I do
10 think the existence of the agreement not to do 12(b)(6)
11 motions speak to the, as you pointed out, the detailed
12 nature of the allegations in the complaint are not
13 legally insufficient.

14 As to the question on damages, Mr. Nagy
15 points out that, yes, we did not sue Daisy Payments,
16 the group that initially took the trade secrets. The
17 reason that is is because that product, the recurring
18 payment platform, was incorporated into the parent
19 company, ConsenSys and in fact has been advertised in a
20 suite of software products that they intend to offer.
21 And while we don't have full access at this time to
22 what defendants have used or how they've profited or
23 how they intend to profit from the trade secrets, we do
24 intend to seek that type of information in discovery
25 and we feel confident we will be able to show

1 significant damages at summary judgment and at trial.

2 As to, you know, the merits of liability in
3 this case, there are two theories of liability. One is
4 breach of contract, the second is trade secrets. I'm
5 not going to get into the details of either of those
6 theories unless your Honor would like. But as to the
7 trade secrets liability, even -- I believe Mr. Nagy is
8 saying that -- I'm not aware of this. We have not
9 gotten there in discovery, but that this idea may have
10 existed in the marketplace. But even if the idea
11 itself existed in the marketplace, that does not
12 foreclose liability and trade secrets.

13 The law is clear that taking trade secrets
14 that speed up your ability to get to market is a basis
15 for trade secrets liability. And while I do think
16 there are a lot of facts that we're going to need to
17 develop to walk the Court and potentially a jury
18 through the mechanics of the trade secrets test and how
19 that is incorporated to a damages model under the TPSA,
20 we're confident we'll be able to show that at the end
21 of discovery.

22 THE COURT: All right. And on that note, I
23 will turn to scheduling. I see from the questionnaire
24 as well as from statements made by defense counsel that
25 the parties have exchanged initial disclosures. I'm

1 glad to hear that. The parties have proposed to have
2 until May 28th to complete fact discovery. That's
3 somewhat longer than I normally would allow, at least
4 for the initial deadline for fact discovery in a civil
5 case. My concern in this case is that then we have
6 expert discovery occurring during the summer months.

7 Is it realistic to have expert discovery
8 over the summer? If so, I'll set the deadlines
9 requested. Otherwise, I'd be more inclined to move
10 everything back by -- that is forward, closer by one
11 month but I look to counsel for guidance.

12 MR. NAGY: Your Honor, this is Mr. Nagy for
13 defendants. I believe both counsel for plaintiff and I
14 have looked at our trial schedules and on this
15 particular issue -- we totally hear you about the
16 summer months. In this particular case, I think we
17 agreed that it was realistic and necessary for us, just
18 based on our existing schedules. We've both worked
19 with experts in this area before. We're confident
20 we'll be able to get it done over the summer, at least
21 from our perspective, your Honor, on the defense side.
22 We think it's certainly realistic.

23 THE COURT: So you think it's realistic not
24 only for counsel but also for the experts?

25 MR. NAGY: Your Honor, Tibor Nagy again.

1 Yes, I do.

2 THE COURT: All right.

3 MR. ROCHE: Your Honor, this is counsel for
4 -- this is Mr. Roche. We have also already confirmed
5 availability, so we're confident, to echo Mr. Nagy's
6 point, that we will be able to get it done during the
7 summer.

8 THE COURT: All right. So I'm going to set
9 this down for a deadline of May 28th of next year for
10 the completion of fact discovery. With respect to
11 expert disclosures, there will be two rounds. In the
12 first round, the party with the burden of proof will
13 serve its opening expert disclosures report as well as
14 the necessary information regarding the experts'
15 qualifications and background. That opening round, the
16 deadline will be July 2nd. The next round of expert
17 rebuttal disclosures will be July 30th. And expert
18 depositions are to completed by August 27th of 2021.

19 With respect to dispositive motions, the
20 parties have asked for almost a month to request a pre-
21 motion conference before the district court. Judge
22 Block, the district court judge, does require that you
23 first request a pre-motion conference before him. I
24 haven't checked his particular individual rules lately
25 but just based on my knowledge of the usual individual

1 rules of the district court judges in this district,
2 usually, those are letters of three or four pages,
3 letter briefs of three or four pages. Do you really
4 need a full month to -- between the close of expert
5 discovery and the deadline for making a request for a
6 pre-motion conference?

7 MR. NAGY: Your Honor, it's Tibor Nagy. I
8 suppose we as the defendants are the likely party to be
9 bringing a motion like this, and the short answer is
10 no, we don't. Hearing you say it, your Honor, you're
11 right. We can get it done more quickly. I would ask
12 that we have just -- at least a little bit of time
13 after Labor Day to get such a letter in, if it might be
14 maybe the end of that week or one week after Labor Day,
15 but we can certainly shave off several weeks there.

16 THE COURT: Is plaintiff's counsel in
17 agreement, Mr. Roche?

18 MR. ROCHE: Plaintiff has no objection to
19 the -- to moving up that deadline a couple of weeks.

20 THE COURT: So September 13th.

21 MR. NAGY: This Mr. Nagy for defendants.

22 MR. ROCHE: It's fine for me if it's fine
23 for Mr. Nagy.

24 MR. NAGY: That's great, your Honor, and I
25 was about to say Labor Day is the 6th of September,

1 2021. It looks like you beat me to that and that's
2 great. If you would give us that one week, that would
3 be fantastic.

4 THE COURT: All right. And then you just
5 check Judge Block's rules with respect to when the
6 response to that is in. But at least this way, both
7 sides should be presented to Judge Block in September,
8 so rather than prolonging that period of time
9 unnecessarily.

10 I'm just looking to see the proposed
11 deadline for amended pleadings. It looks like neither
12 side is anticipating amending the pleadings.
13 Therefore, I will deem the deadline to have passed for
14 adding parties or amending the pleadings. That does
15 not mean that you're barred from amending if something
16 develops in the course of the case and there's good
17 cause to amend but it does mean you would need further
18 leave of the Court to amend on a showing of good cause
19 and due diligence.

20 Are there any other dates or deadlines that
21 any of you would like the Court to include in its
22 minute entry?

23 MR. NAGY: Your Honor, Tibor Nagy for
24 defendants. No from our side, thank you.

25 MR. ROCHE: Your Honor, Mr. Roche for

1 plaintiff. No further dates on our end.

2 THE COURT: Now, in every or I would say 99%
3 of the civil cases assigned to me, I schedule a
4 settlement conference with the parties or I refer the
5 case to court-annexed mediation. In this case, I would
6 certainly be open to referring it to court-annexed
7 mediation if you would like to be able to find a
8 mediator who has expertise in this particular area.

9 Do counsel -- I don't know if you've
10 discussed this with one another. Do you have a
11 preference in this case?

12 MR. NAGY: Your Honor, this is Tibor Nagy
13 for defendants.

14 MR. ROCHE: Your Honor --

15 MR. NAGY: Sorry, Kyle, we keep doing this.

16 MR. ROCHE: Go ahead.

17 MR. NAGY: Thanks, I'll be brief.

18 I think counsel and I, your Honor, had a
19 very active discussion about settlement before the suit
20 was filed. And given that discussion, which led to
21 this request from us that we get this disclosure of the
22 trade secrets, I don't think it would be productive now
23 to have that discussion or a mediation. I think later
24 in the proceedings, after some discovery has
25 transpired, I think the parties will be in a better

1 position. My own preference, your Honor, would be to
2 have a conference before you but I'm open to a
3 mediation and I'm happy to talk to counsel about it.
4 So I think if we're given some time and we're allowed
5 to do a little discovery, later in the proceedings I
6 think will be a more opportune time, and I'll be happy
7 to work with counsel. I don't have a strong preference
8 there. I'm sure we can work it out by agreement. But
9 on the defense side, our only view is that right now is
10 not the right time.

11 THE COURT: I wasn't planning to put it down
12 for an immediate settlement conference or mediation.
13 But in any event -- and I'll certainly hear from
14 plaintiff's counsel. What I would be prepared to do as
15 an alternative is to set a control date by which
16 counsel can confer with one another and then can file a
17 letter motion proposing either the scheduling of a
18 settlement conference or referral to court-annexed
19 mediation with an approximate time period when the
20 parties feel they will have sufficient discovery to
21 have meaningful settlement discussions.

22 So turning now to Mr. Roche, is that
23 agreeable to plaintiff?

24 MR. ROCHE: Yes, your Honor, and I echo Mr.
25 Nagy's point on probably the later in discovery, the

1 better. I think your proposal makes a lot of sense.

2 THE COURT: All right, later in discovery.
3 Give me a month when you think it makes sense to at
4 least have the control date, keeping in mind that if
5 the case, for example, is referred for court-annexed
6 mediation, it could be another month or two before the
7 parties have agreed upon a mediator, have spoken with
8 the mediator, and have come up with a date. Let's not
9 have it too late in the process because then it may get
10 impractical to schedule something right away.

11 MR. ROCHE: Your Honor, my thinking would be
12 a month before discovery is over. I'm pulling up a
13 calendar now. Discovery closes May 28th. I think --
14 and the reason for that is, if there is the prospect of
15 settlement, the parties would be able to avoid expert
16 costs if we plan to have the settlement discussion
17 either right at the end of the discovery or right at
18 the beginning of the expert discovery phase. So if we
19 set the date for either April 30th or 23rd, I think that
20 would give the parties time to review the discovery
21 they have and potentially avoid, if there is potential
22 for a settlement, incurring expert fees.

23 THE COURT: Well, again, if we set the
24 control date for the end of April and fact discovery
25 closes in a month, it may be a couple of months before

1 the parties actually sit down with one another, and
2 fingers crossed that we're not going to be doing this
3 virtually, but at least the parties physically or
4 remotely sit down to engage in settlement discussions.

5 I'm hesitant to put it off that long because
6 it may well be that there won't be a mediation or a
7 settlement conference until July or until late in June,
8 when the experts are already putting in time preparing
9 their reports. So I would propose earlier in April but
10 I throw that out to counsel for their thoughts.

11 MR. NAGY: Your Honor, Tibor Nagy for
12 defendants. That makes sense to us.

13 THE COURT: Mr. Roche?

14 MR. ROCHE: That makes sense for us as well.

15 THE COURT: All right. And remember, if in
16 early April, you're in the middle of some very critical
17 discovery, you can always write to the Court and
18 request additional time to make the -- to get back to
19 the Court about how you would like to proceed to try
20 and resolve the case. But in the meantime, let's say
21 April 5th will be the control date. That's the date by
22 which you talk with one another, come to some consensus
23 about whether you prefer a settlement conference versus
24 court-annexed mediation, and provide an approximate
25 time frame as to ideally when you would like to have

1 those discussions.

2 Now, I referred to a letter motion. In
3 accordance with my individual rules, any time that
4 you're asking this Court to take any action on a
5 submission, be sure to docket it as an ECF motion
6 event, even if it's letter form. The reason for that
7 is, we have an electronic tickler system and if you use
8 the motion event, that tickler system is activated and
9 it lets us keep track -- helps us keep track of pending
10 applications in our hundreds of cases.

11 Let me just go through some housekeeping
12 matters with you. As I indicated earlier, the schedule
13 that I've given you on the record will be included in a
14 minute entry. I expect that it will be docketed into
15 the ECF court file later this afternoon. I do expect
16 you to comply with these deadlines. That's not to
17 suggest that they're etched in stone. If for any
18 reason you need to modify any of the dates or
19 deadlines, either in the minute entry or in any
20 subsequent order of the Court, you do need leave of the
21 Court for that.

22 My individual rules specify how you should
23 go about making such a request. The first thing you
24 should do is speak with opposing counsel, see if you're
25 in agreement, and then file a letter motion that is a

1 letter to the Court but docketed as an ECF motion
2 event. Be sure to include in the letter what change or
3 changes you need, the reason for the request and
4 whether it's on consent or not. And be sure to include
5 all the dates and deadlines that you want changed. For
6 example, if you say you want to put off fact discovery
7 but you don't address expert discovery, it's probably a
8 pretty good inference that you want everything pushed
9 back, but don't leave me guessing or speculating. Just
10 make clear all the deadlines that would be affected
11 that you'd like to have changed.

12 If any discovery disputes come up during the
13 course of the case, try to work those out informally
14 before getting the Court involved. I really don't need
15 to tell you that. You've already talked about how
16 you've been engaged in a meet and confer over
17 plaintiff's interrogatory responses or I guess -- I
18 can't remember now whether it was plaintiff's or
19 defendant's. But in any event, you know the meet-and-
20 confer requirements. If you're unable to resolve a
21 discovery dispute informally, any application that you
22 want to make on a discovery issue should come to me in
23 the first instance rather than to Judge Block. My
24 individual rules incorporate by reference Local Civil
25 Rule 37.3(c). Discovery disputes ordinarily should be

1 addressed in letter motions and letter responses of up
2 to three pages plus attachments.

3 The questionnaire that I had you prepare is
4 for my information only. This is not a court order
5 even though it's now part of the court record because I
6 had you file it. I'm not incorporating it by reference
7 into the Court's minute entry.

8 The items that deal with the scope of
9 discovery, items 2 through 6, I see that the parties
10 have either agreed upon the information or have
11 indicated they've reserved their right to go beyond it,
12 but I don't see any red flags in any of those responses
13 that cry out for any judicial resolution at this time.
14 So I'm not going to address any of those issues other
15 than to say that since the minute entry is not going to
16 include those items, you're free to modify them on
17 consent without further leave of the Court. They're
18 not part of a court order. For example, if it turns
19 out you want more than 100 requests to admit or more
20 than 25 interrogatories, just speak with opposing
21 counsel. Try to work that out informally and if you're
22 able to do so, I don't need to hear from you about it.

23 I do encourage the parties to have
24 settlement discussions early and often. And if the
25 discovery that you're taking leads you to have those

1 discussions sooner than you're currently anticipating,
2 let me know right away. If you do reach an agreement
3 in principle, file a letter motion asking that the
4 existing schedule be held in abeyance.

5 That covers everything that I had intended
6 to address. Is there anything else that any of you
7 would like to discuss at this time?

8 MR. ROCHE: Your Honor, this is Kyle Roche
9 for plaintiff. Nothing further on our end.

10 THE COURT: Anything for defendants?

11 MR. NAGY: Tibor Nagy here, your Honor. No
12 for defendants, thank you.

13 THE COURT: All right, everyone take care.
14 I'm going to terminate this proceeding.

15 MR. NAGY: Thank you, your Honor.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

November 10, 2020